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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:

**PETITION TO AMEND THE
RULES OF PROCEDURE FOR
EVICTION ACTIONS**

Supreme Court No. R-15-0015

**COMMENT OF THE
STATE BAR OF ARIZONA**

The State Bar of Arizona filed Petition R-15-0015 asking this Court to adopt a procedure allowing for a change of judge as a matter of right and for cause in eviction actions. That petition proposed two different rules for the Court's consideration, one based on the existing Justice Court Rules of Civil Procedure and the other perhaps more tailored to the time-sensitive demands of eviction actions.

Upon further reflection and with input from its very deliberative Civil Practice and Procedure Committee, the State Bar now proposes a third option for the Court's consideration.

The third option is a hybrid of the other two proposals and involves simply adding the following sentence to each of them:

1 A change of judge as a matter of right must be granted if the change
2 of judge will not prevent the hearing from occurring consistent with
3 A.R.S. § 33- 1377(B) and A.R.S. § 12-1177(C).

4 This additional language references the statutes relevant to the delay issue as
5 a way of creating the most objective standard that would provide clearest notice to
6 all as to what delay would not be permitted.

7 With the addition of that sentence, Proposal 1 would read:

8 Rule 9(c): Motion for Change of Judge

9 For purposes of this subsection, a lawsuit has only two sides. A
10 party or a side, if there is more than one plaintiff or one defendant in a
11 lawsuit, may request a change of judge as a matter of right orally or in
12 writing. The party or side must request a change of judge as a matter
13 of right in the precinct where the lawsuit is pending. The request must
14 state that the party or side has not previously requested a change of
15 judge in this lawsuit, that the party or side has not waived the party's
16 right to change of judge, and that the request is timely. A request is
17 timely if it is made prior to or at the time of the first court appearance
18 or upon reassignment of the matter to a new judge for trial. *A change*
19 *of judge as a matter of right must be granted if the change of judge*
20 *will not prevent the hearing from occurring consistent with A.R.S. §*
21 *33- 1377(B) and A.R.S. § 12-1177(C).* A party waives a right to a
22 change of judge if the judge has ruled on any contested motion or issue,
23 or if the trial has started. When a proper and timely request for a change
24 of judge as a matter of right is orally requested or filed, the court must
25 transfer the lawsuit to a new judge within the county for further
proceedings.

20 If a party believes that the party will not have a fair and impartial
21 trial before a justice of the peace, then the party must proceed as
22 provided in Arizona Revised Statutes § 22-204, except that any request
23 must be made by the date of the first court appearance and five days'
24 notice is not required.

24 With the addition of that sentence, Proposal 2 would read:

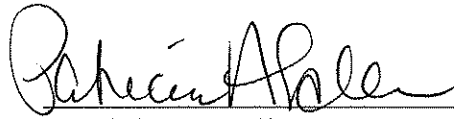
1 Rule 9.1

2 If, because other judges are readily available, it can be granted without
3 causing a day's delay in the proceeding, a single request for a change
4 of judge as a matter of right shall be granted. *A change of judge as a*
5 *matter of right must be granted if the change of judge will not prevent*
6 *the hearing from occurring consistent with A.R.S. § 33- 1377(B) and*
7 *A.R.S. § 12-1177(C).*

8 Although the additional language simply enhances either of the State Bar's
9 two other proposals, the State Bar requests that adding it be considered a third option.

10 As is evident by suggesting three options for the Court's consideration, the
11 State Bar believes that the right to change of judge should exist in justice court
12 evictions, and urges the Court to adopt an appropriate rule providing for it.

13 RESPECTFULLY SUBMITTED this 5th day of May, 2015.

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15 Patricia A. Sallen
16 Deputy General Counsel

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18 Electronic copy filed with the
19 Clerk of the Arizona Supreme Court
20 this 18th day of May, 2015.

21 by: 
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